IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM - 1926

No.

INGRAM-DAY LUMBER COMPANY,
Petitioner,

vs.

SYDNEY C. McLOUTH,
Revived against THE AMERICAN LOAN & TRUST COMPANY, Administrator of the Estate of Sydney C. McLouth, Deceased,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Ingram-Day Lumber Company, a Wisconsin Corporation, respectfully represents:

February 5, 1919, or nearly three months after the signing of the Armistice, Sydney C. McLouth, of Marine City, Michigan, contracted in writing with petitioner for the manufacture and delivery to him of specified quantities of lumber (R. 5-10); petitioner did not make said contract as a sub-contractor under any other con-

tracts of McLouth or otherwise than as a direct, original contractor with him, on his own credit (R. 56), according to the terms of said instrument; and it had no notice or knowledge whatsoever of McLouth's contract with the United States Shipping Board Emergency Fleet Corporation (R. 56).

May 6, 1919, McLouth breached his said contract with petitioner (R. 47) to its damage in the sum of $42,789.96 (R. 61).

Petitioner sued McLouth in the District Court of the United States for the Eastern District of Michigan in an action of assumpsit for said breach (R. 1-14) and the United States Attorney for said District appeared in his behalf and pleaded the general issue (R. 14). Subsequently McLouth died; the cause was revived against his Administrator, who appeared by the Assistant United States Attorney and pleaded the general issue (R. 22).

The issue was tried to the court without a jury (R. 23), and the defense, over petitioner's objections, introduced in evidence two contracts for the construction of tugs between McLouth and said Fleet Corporation (R. 51-52) and a cancellation thereof by said Fleet Corporation (R. 53-55). The defense of McLouth was that the cancellation of his contracts with the Fleet Corporation, under the Act of June 15, 1917 (40 Stat. 182) limited his liability to petitioner to the value of the lumber actually delivered to him and absolved him from further liability for said breach.

The District Court made findings of fact and conclusions of law (R. 61) and entered judgment for petitioner in the sum of $647.65 (R. 39). The District Court found as a fact that petitioner had no knowledge

of McLouth's contracts with the Fleet Corporation; it also found as a fact that its total damage on account of said breach of contract by McLouth was $42,789.96, of which sum $42,142.31 represented its lost profits (R. 61). The District Court, nevertheless, declined to enter judgment for petitioner for more than said sum of $647.65 (R. 39) on account of the decision of the United States Circuit Court of Appeals for the Ninth Circuit in Todd Dry Dock and Construction Company vs. Sumner Iron Works, 289 Fed. 217 (Certiorari denied, 263 U. S. 700) (R. 38-39).

Upon writ of error to the United States Circuit Court of Appeals for the Sixth Circuit, that Court affirmed the judgment of the District Court on the ground that petitioner was a sub-contractor under McLouth and chargeable with notice of all the conditions of his contracts with the Fleet Corporation (R. 74-79).

Petitioner is advised and believes that the judgment of the said Circuit Court of Appeals in said case is erroneous and contrary to the just rights of petitioner and that this Court should require said cause to be certified to it for its review and determination, in conformity with the provisions of the Act of Congress in such cases made and provided.

The judgment of the Circuit Court of Appeals in said case rests upon its assumption that petitioner had knowledge of McLouth's contracts with the Fleet Corporation, was a sub-contractor under them, and was bound by all their terms (R. 74-79). The judgment of the District Court was based on its conclusion that such knowledge, or lack of knowledge, was immaterial, under the decision of the Court of Appeals for the Ninth Circuit in Todd Dry Dock & Construction Company vs. Sumner Iron Works (supra) (R. 38-39).

The District Court found as a fact that petitioner had no knowledge of McLouth's contracts with the Fleet Corporation (R. 61). No exception was taken to this finding and it was not questioned in the Circuit Court of Appeals. There was nothing in the record therein to show that petitioner was a sub-contractor under McLouth or was in any privity whatsoever with the Fleet Corporation or its contracts with him aforesaid. The Court of Appeals erred in both said assumptions of fact, to-wit, that petitioner had knowledge of said contracts and that it was a sub-contractor under McLouth, and its said judgment is erroneous unless, as a matter of law, the statute includes such contracts as that between petitioner and McLouth in this case.

This petition presents these questions:

1. Can subdivision (b) of the Act of June 15, 1917, 40 Stat. 182, authorizing and empowering the President "to modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material" be used to modify the obligations of a private contract, by one of the parties thereto as against the other without the latter's consent?

2. Does the cancellation of a contract between an individual and the Government under said subdivision (b) relieve that individual from the obligations of his private contract with another individual who contracted with him without knowledge of his contract with the Government?

3. Does subdivision (b) authorize the modification or cancellation of a private contract, as between the parties without their assent thereto?

4. Petitioner having no knowledge of McLouth's contracts with United States Shipping

Board Emergency Fleet Corporation, did the cancellation by the Fleet Corporation of McLouth's contracts with it entitle McLouth to, in turn, cancel his contract with petitioner?

Certiorari should be granted in the case for the following reasons:

I.

Conflict of decisions exists between the Circuit Court of Appeals, Sixth Circuit, which rendered the decision in this case, and the Circuit Court of Appeals, Seventh Circuit, which decided the case of American Chain Company vs. Interstate Iron & Steel Company, 291 Fed. 1006, Certiorari denied, 263 U. S. 709.

II.

The decision of the Court of Appeals is in conflict with settled principles of law.

III.

The precise question involved—does the Act of June 15, 1917, 40 United States Statutes at Large 182, give to one party the right to modify the obligations of a private contract entered into with another without its consent?—has never been decided by this Court, but public interest requires that it should be.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Sixth Circuit commanding said Court to certify and send to this Court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of said Court of Appeals in this case which was entitled in that Court "Ingram Day Lumber Company, Plaintiff

in Error, vs. Sydney C. McLouth, Revived against The American Loan & Trust Company, Administrator of the Estate of Sydney C. McLouth, Deceased, Defendant in Error, No. 4487," to the end that said cause may be reviewed and determined by this Court as provided by law, and that your petitioner may have such other and further relief or remedy in the premises as to this Court may seem appropriate; and that the said judgment of the said Circuit Court of Appeals may be reversed by this Honorable Court.

INGRAM DAY LUMBER COMPANY,
By W. A. WHITE,
SIDNEY T. MILLER,
GEORGE L. CANFIELD,
FERRIS D. STONE,
WILLIAM J. SHAW,
Attorneys for Petitioner.

STATE OF MICHIGAN, }
COUNTY OF WAYNE. }ss.

George L. Canfield, being duly sworn, says: I am a member of the firm of Miller, Canfield, Paddock & Stone, attorneys for petitioner herein.

I have read the foregoing petition, and the same is true to the best of my knowledge, information and belief.

The reason why this verification is not made by the petitioner is that it is absent from the State of Michigan and none of its officers are available for that purpose.

This application is made in good faith and not for the purpose of delay.

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Subscribed and sworn to before me this ..... day of September, A. D. 1926.

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Notary Public, Wayne County, Mich.

My commission expires.....

I do hereby certify that I have examined the foregoing petition and that in my opinion it is well-founded and entitled to the favorable consideration of this court.

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